IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5892 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DANSINH AMARSINH RATHOD

Versus

DIVISIONAL CONTROLLING AUTHORITY

Appearance:

1. Special Civil Application No. 5892 of 2002

MR RV DESAI for Petitioner No. 1

MR ASHISH M DAGLI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 03/05/2005

C.A.V. JUDGEMENT

1. The present petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India, challenging the Judgement and Award

dtd.18/1/2002 passed by the Labour Court, Ahmedabad in Reference (LCA) No.1563 of 1996.

2. Mr.R.V. Desai, learned counsel for the petitioner has mainly argued that the petitioner was working under the respondent since last 15 years and at the relevant time, he was working as Assistant Traffic Inspector; that during the period from 20/8/1995 to 22/8/1995, the petitioner was assigned duty of checking the ST Bus of Gandhinagar along with co-accused Mr.C.S. Swami, Traffic Inspector, who was next superior officer of the petitioner under whom the petitioner was working; that the services of the petitioner and Mr.Swami, co-accused of the petitioner were terminated by the respondent, on the ground that during the aforesaid period, they have consumed liquor and misused the Jeep Car of the respondent while on duty, after holding departmental inquiry; that the charges levelled against the petitioner and Mr.Swami were same; that the petitioner had no intention to consume liquor and commit the misconduct but due to compulsion of Mr.Swami, the superior officer of the petitioner, the petitioner has been involved in the misconduct; that Mr.Swami had preferred departmental appeal against his termination order and in view of the order passed by the Divisional Controller, ST Palanpur dtd.2/11/1999, Mr.Swami has been reinstated w.e.f.8/11/1999; that the petitioner had preferred the Reference before the Labour Court challenging termination order passed against him and raised various contentions and also placed on record the order reinstating the co-accused Mr.Swami in service, against whom same charges were levelled, but the labour court failed to consider the evidence and order reinstating Mr.Swami in service and has passed the impugned Award which is illegal and in violation of Articles 14 and 16 of the Constitution of India; that the labour court failed to appreciate that the petitioner, Mr.Swami, was the superior officer of the petitioner and under his compulsion, the petitioner has committed the misconduct; that no FIR for the alleged consumption of liquor has been lodged; that Mr.Swami has not supported the allegations levelled against the petitioner; Mr.Swami against whom same charges were levelled, has been reinstated; that the labour court failed to appreciate that the misconduct alleged to have been committed by the petitioner and Mr.Swami jointly and Mr.Swami has been reinstated; that the Labour Court failed to appreciate that had the petitioner filed a departmental appeal, the department would certainly have passed the same order as passed in the matter of Mr.Swami; that in the inquiry, no opportunity of defence has been given to the petitioner,

the driver of the Jeep has not been examined, no opportunity of cross examination has been given, Learned counsel for the petitioner has made a statement at bar that the petitioner is not pressing for back wages till the date of filing of the petition i.e. 25/6/2002. Consequently, he has prayed to quash the impugned Award and direct the respondent to reinstate the petitioner with back wages as aforesaid with continuity of service. He has also placed reliance on the decision of this court (Coram : P.B. Majmudar,J.) dtd.20/8/2001 rendered in the case of GSRTC Vs. Vikram Jetabhai Sutreja, in Special Civil Application No.11610 of 2000.

3. On the other hand, Mr.Dagali, learned counsel for the respondent has vehemently argued that the petitioner has been involved in serious misconduct of consumption of liquor during his duties and has misused the vehicle of the respondent, and if the petitioner is reinstated, such misconduct would increase in the respondent Corporation; that the petitioner has admitted the misconduct in the departmental inquiry; that the service of the petitioner has been terminated after due following inquiry. Consequently he has prayed to dismiss the petition. He has also placed reliance on the decision reported in AIR 2000 SC 839.

4. Having heard the learned counsel for the respective parties and considering the evidence on record, it is clear that the respondent has terminated the service of the petitioner on the ground that the petitioner has committed misconduct of consumption of liquor and misuse of Jeep etc. while on duty. The respondent had also made same allegations against Mr.Swami, who was superior officer of the petitioner at the relevant time. The respondent had made the allegation of misconduct alleged against the petitioner and Mr.Swami jointly. However, Mr.Swami, superior officer and co-accused of the petitioner has been reinstated by the respondent in view of the order passed in the departmental appeal preferred by him. Considering these facts and circumstances of the case, misconduct committed by the petitioner and the decision of this Court in the case of GSRTC Vs. Vikram Jethabhai Sutreja, in Special Civil Application No. 11610 of 2000, I am of the opinion that the Labour Court erred in rejecting the reference preferred by the petitioner. The Award passed by the Labour Court is, therefore, illegal, in violation of principles of natural justice and Articles 14 and 16 of the Constitution of India. So far as the decision cited by the learned counsel for the respondent is concerned, I am in quite agreement with the ratio laid

down therein, but in the peculiar facts and circumstances of the case, the same will not be helpful to the respondent.

5. In the result, the petition is allowed. The judgement and award dtd.18/1/2002 passed by the Labour Court, Ahmedabad in Reference (LCA) No.1563 of 1996 is quashed and set aside. The respondent is hereby directed to reinstate the petitioner on his original post with continuity of service as well as back wages from the date of filing of the petition i.e. from 25/6/2002 to the petitioner. Rule is made absolute with no order as to costs.

(Sharad D.Dave, J.)

rafik